

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37193

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 559
	)	
Plaintiff-Respondent,	)	Filed: July 22, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
CHARLES TYRON McCULLOCH,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Judgment of conviction and unified sentence of ten years, with a minimum period of confinement of five years, for burglary, affirmed; orders relinquishing jurisdiction and denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth Ann Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

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Charles Tyron McCulloch pled guilty to burglary. Idaho Code § 18-1401. The district court sentenced McCulloch to a unified term of ten years, with a minimum period of confinement of five years and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction. McCulloch filed an Idaho Criminal Rule 35 motion, which the district court denied. McCulloch appeals asserting that the district court abused its discretion by imposing an excessive sentence, relinquishing jurisdiction, and by denying his Rule 35 motion.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established.

*See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that McCulloch has failed to show that the district court abused its discretion, and we therefore affirm the order relinquishing jurisdiction.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including the new information submitted with McCulloch's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, McCulloch's judgment of conviction and sentence, and the district court's orders relinquishing jurisdiction and denying McCulloch's Rule 35 motion, are affirmed.